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## IN THE CHANCERY COURT OF THE CITY OF RICHMOND.

ÆTNA INSURANCE COMPANY v. JOSEPH BUTTON, Commissioner of Insurance.

Nov. 9, 1909.

**1. Insurance—Constitutional Law—Statutes—Powers of Legislature—Appropriation for Charity.**—The Act of the General Assembly of Virginia of March 11, 1908 (Acts 1909, Chap. 181), to create a Firemen's Relief Fund, etc., is unconstitutional because it appropriates money to a charitable institution not owned or controlled by the state.

**2. Taxation—Public Purposes.**—It is also unconstitutional because it imposes a tax for a private, not a public purpose.

This was a bill to enjoin the commissioners of insurance from enforcing an Act approved March 11, 1908 (Acts 1909, Chap. 181), to create a Firemen's Relief Fund. The Act was assailed as an unconstitutional use of the taxing power. Demurrer to bill and demurrer overruled. Appeal refused.

*Alexander C. King and Randolph Harrison*, for complainant.

*Richard Byrd, Roy B. Smith and Samuel L. Kelly*, for defendant.

Perpetual injunction granted.

Opinion.

DANIEL GRINNAN, J. The demurrer to the bill in this suit presents the question of the constitutionality of the Act of the General Assembly of Virginia, approved on March 11, 1908 (Acts 1909, Chap. 181), entitled "An Act to Create a Firemen's Relief Fund and to Increase the Efficiency of the Fire Departments in the Cities, Towns and Counties of Virginia."

The Act has been assailed upon a great many grounds, but it will be necessary to mention only two, in my view of the case.

It appears to me very clearly to contravene the letter and spirit of that portion of § 67, art. IV, of the present Constitution which provides "nor shall the General Assembly make any like appropriation to any charitable institution, which is not owned or controlled by the State," with an exception not relevant to this case.

It also appears to me that it is very clear that the tax imposed by the Act is for a private, not a public purpose, and that therefore it cannot be sustained.

I am of opinion that the Act in question is unconstitutional and that the demurrer should be overruled.

**Note.**

This statute required all fire or lightning insurance companies doing business in any city, town, county or district in Virginia having a regular organized fire department, etc., to render an account to the commissioner of insurance of all premiums collected on business done within such cities, towns, etc., each year, and to pay a tax of one per cent thereon, to constitute a fund for the benefit of the Firemen's Relief Fund Association of each city, town, etc. The constitutionality of the statute was assailed on various grounds, only two of which are noticed in the opinion. The bill alleged that the corporations to which the proceeds of this tax were to be eventually paid over, were private corporations having no connection with the governmental organizations of the state or its political divisions, and that the payment of the tax in the first instance into the treasury of the state was a mere administrative incident, and did not alter the fact that it was levied for a private and not a public purpose. The other ground alleged was that it violated § 67, art. IV, of the Constitution, in that it made an appropriation to a charitable institution not owned or controlled by the state. Both of these objections seemed to have been well taken, and the decision of the Chancery Court against the constitutionality of this legislation seems to be thoroughly sound, and not to require any citation of authority to support it beyond the fundamental principles governing the power of the legislature in enacting statutes taxing one class for the benefit of another, and laying taxes for private and not public purposes.

J. F. M.

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**SUPREME COURT OF APPEALS OF VIRGINIA.**

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NORFOLK & PORTSMOUTH TRACTION Co. v. C. B. WHITE & BROS.,  
Incorporated.

Jan. 18, 1912.

[73 S. E. 467.]

1. **Vendor and Purchaser (§ 230\*)—Bona Fide Purchaser—Notice.**  
—Where defendant's deed recited that it was the intent of his grantor to convey all the property acquired by said grantor under a certain recorded deed, and that the property was subject to any easements created by the occupancy of a street railway, and the recorded deed referred to contained no reference to the easement of the street railway, it merely gave notice to the grantee that the street railway was in possession of part of the land conveyed, but not as to the railway's title.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 502-512; Dec. Dig. § 230.\*]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.